IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9668 of 2000
With
SPECIAL CIVIL APPLICATION No. 9684 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SINGSAR SEVA SAHKARI MANDALI LIMITED - Petitioner(s)
Versus
REGISTRAR & 1 - Respondent(s)

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Appearance :
MR MUKESH A PATEL for Petitioner(s) : 1,
MT JASWANT SHAH, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/02/2007

ORAL JUDGMENT

These two petitions are filed by two co-operative societies challenging the action of respondent No.2,

Gujarat State Cooperative Marketing Federation Limited seeking to expel the petitioners from the membership of the said Federation. In the nutshell, case of the petitioners is that these petitioners are sought to be victimized by termination of their membership of the Federation only on political considerations. It is stated that without their knowledge a sum of Rs.1,000/- each was sought to be deposited in their bank accounts at the behest of the Federation to show that the memberships stand cancelled.

1.1 Heard Ld. Advocate Arpit Patel for petitioners and AGP Shri Shah for the State.

2. It is also the case of the petitioners that no procedure as required under the law and in particular under the provisions contained in the Gujarat Cooperative Societies Act was undertaken by respondent No.2 Federation before seeking to terminate the memberships of the petitioners. It is contended that an opportunity of hearing was also not granted and that, therefore, the removal of the petitioners from the membership of respondent No.2 Federation should be quashed.

3. On behalf of respondent No.2 affidavit in reply has been filed contending, inter alia, that the petitioners had secured their membership through misrepresentation and fraud and upon coming to the notice of such fraud, their memberships were terminated. In para 3.2.1 of the affidavit, it is stated that membership of the petitioner society was in dispute and that therefore notice was issued and since prima facie it was found that membership was secured by fraud and misrepresentation and upon coming to notice of such fraud, the same was cancelled. It is further contended in para 3.2.2 of the affidavit that if it is found that the membership of the Federation was secured by misrepresentation or fraud, the Federation has right to cancel such membership upon verification of the details.

4. Significantly in para 3.2.3 of the affidavit in reply, it is stated that pay-slip was drawn in favour of the petitioner society and was forwarded to the Bank and the same has been credited in the account of the society in the last week of August and therefore, the petitioner society has ceased to be a

member of respondent No.2 Federation.

5. Having heard the learned advocates appearing for the parties and having perused the material on record, I find that the stand of respondent No.2 is that the membership of the petitioners is cancelled, however, no such order has been produced on record. No show cause notice or any other form of opportunity appeared to have been given to the petitioners before respondent No.2 Federation decided to cancel their memberships. No procedure as laid down under section 23 of the Gujarat Cooperative Societies Act for removal of membership of the society or under section 36 for expulsion of membership has been followed. Considering all these aspects of the matter, I find that the stand of respondent No.2 Federation cannot be sustained in the eye of law.

6. The contention of the petitioners that the action of respondent No.2 Federation was actuated on account of extraneous consideration seems attractive. This was particularly since the petitioners have stated in the petition that some unauthorized person accounted a sum of Rs.1,000/- each in the bank

accounts of the petitioners. This remittance ha been admitted by respondent No.2 in the affidavit in reply wherein, as noted above, it has been stated that the pay-slip was prepared in favour of the petitioners and forwarded to their bank. Thus admittedly, respondent No.2 directly sought to deposit a sum of Rs.1,000/- in the bank accounts of the petitioners making a show that membership stood cancelled.

7. One may also notice that this Court at the outset granted protection in favour of the petitioners by ordering maintenance of status quo. Considering all these aspects of the matters, I find that the stand of respondent No.2 cannot be accepted.

8. In the result, both the petitions are allowed. Action of respondent No.2 Federation to remove the petitioners from the membership of the Federation is quashed. Rule is made absolute to the above extent with no order as to costs. It is clarified that I have expressed no opinion on the issue of the petitioners having obtained membership on misrepresentation or fraud and it will be open for the

Federation to proceed further in accordance with law.

(Akil Kureshi, J.)

(vjn)